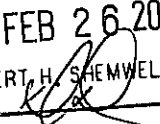


FEB 26 2009  
ROBERT H. SHERWELL, CLERK  
BY  DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION

JAMES BURNS

CIVIL ACTION NO. 08-0428

VERSUS

JUDGE ROBERT G. JAMES

LYDIA SMITH, ET AL.

MAG. JUDGE KAREN L. HAYES

MEMORANDUM ORDER

Pending before the Court is Plaintiff James Burns's ("Burns") Motion for the Extension of Time [Doc. No. 39]. In the Motion, Burns (1) requests additional time to "appeal the District Judge's denial of plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction," (2) states that he "would like to appeal the written denial of a Motion for the Appointment of Counsel," and (3) "petitions this Honorable clerk for verbatim copies of the transcripts" of the hearing held on February 19, 2009. For the following reasons, the Motion is DENIED as MOOT.

On February 19, 2009, the Court denied Burns's motion for a temporary restraining order and preliminary injunction for the reasons stated on the record. It appears that Burns seeks to appeal the Court's decision to the United States Court of Appeals for the Fifth Circuit.<sup>1</sup> To the extent that Burns intends the pending motion to serve as an interlocutory notice of appeal, the Court notes that the Fifth Circuit lacks jurisdiction to consider a challenge to the denial of a temporary restraining order. *See Faulder v. Johnson*, 178 F.3d 741, 742 (5th Cir. 1999). Accordingly, Burns's request for an extension of time to file a notice of appeal of the Court's denial of his request for injunctive relief is DENIED as MOOT.


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<sup>1</sup>In the motion, Burns "request[s] from this honorable clerk the information pertaining to what court of appeals I file in and proper instructions for the appellate procedure in that court." [Doc. No. 39, ¶ III].

In contrast, Burns may appeal the Court's orders<sup>2</sup> denying his Motion for the Appointment of counsel and Request for Jury Trial [Doc. No. 28]. *See Marler v. Adonis Health Prods.*, 997 F.2d 1141, 1142 (5th Cir. 1993). The Court construes Burns's Motion as an interlocutory notice of appeal of these orders. To the extent that Burns has requested an extension of time to file a notice of appeal, that request is DENIED as MOOT, as the notice was timely filed in this Court. *See* FED. R. APP. 4(a)(1)(A). Burns should await further instructions from the Fifth Circuit regarding how to proceed with his appeal.

With respect to Burns's request for a transcript of the hearing on February 19, 2009, the Court has referred his request to the Court Reporter. Burns should await further instructions from the Court Reporter. This request is also DENIED as MOOT.

MONROE, LOUISIANA, this 26 day of February, 2009.

  
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ROBERT G. JAMES  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup>On February 12, 2009, Magistrate Judge Karen L. Hayes issued a written order denying Burns's motion for the appointment of counsel. [Doc. No. 31]. On February 19, 2009, Judge Robert G. James denied Burns's renewed request for the appointment of counsel for the reasons stated on the record.